IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9879 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

CHANDULAL T DOSHI

Versus

NEW JAHANGIR VAKIL MILLS

Appearance:

1. Special Civil Application No. 9879 of 1996

MR KIRAN YAJNIK for Petitioner No. 1

MS PJ DAVAWALA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 18/12/2004

ORAL JUDGEMENT

This petition under Article 226 of the

Constitution is filed with a prayer to quash the action of the respondent-Mill of not granting the benefits of voluntary retirement to the petitioner. According to the averments made in the petition, the petitioner was working with the respondent-Mill Corporation since 37 years and was holding the post of Provident Fund Officer and, on and from 18.9.1987, he was given additional charge of Factory Manager. The respondent-Corporation had announced a scheme for voluntary retirement for its employees on 6.5.1992 and the petitioner had applied and requested in writing on 14.6.1992 so as to avail of the voluntary retirement scheme. He had thereafter written several letters for granting the benefits of voluntary retirement scheme. According to the petitioner, he was fulfilling all the necessary conditions for grant of the benefits under the said scheme and denial to him of the benefits of the scheme was arbitrary and discriminatory.

2. An incomplete copy of the scheme and conditions for voluntary retirement is to be found at Annexure-A to the petition. According to the preamble to the scheme, the respondent Company was sick and closed from initial take-over and there were no prospects of any improvement in the situation. Under such circumstances, the Mill Company was required to be closed down some of its departments. A list of such departments and machineries which were to be closed is supposed to have been annexed but it is not found with Annexure-A. The scheme is expressly meant for the workmen in the category of technicians, clerical staff and workmen. The benefits to be granted under the scheme appeared to have been offered with a view to reducing the number of posts which was stipulated to be done after taking into confidence the representative union of the workmen. According to the last condition of the scheme, it was liable to be amended or withdrawn by the management without the requirement of informing anyone.

3. The learned counsel for the respondent submitted that having regard to the position, designation and pay scale of the petitioner, the voluntary retirement scheme did not apply to his case and, in any case, the respondent-Mill Corporation was already ordered to be wound up by order dated 6.2.1996 of this Court in Company Petition No.205 of 1996.

4. It is clear from the above discussion of facts and contentions that the petitioner has not sufficiently established his right or entitlement to the benefits under the voluntary retirement scheme and it is doubtful whether the scheme was meant to cover the staff of the

respondent who were in the rank of officers or managers. Mere allegation of discrimination or arbitrary action or inaction is not sufficient and it is far from establishing the right or entitlement to a particular benefit. The petitioner has clearly failed in proving either his entitlement to the benefits or arbitrariness in the action or inaction of the respondent. Therefore, no relief can be granted to the petitioner. The petition is, therefore, rejected and Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)